APPENDIX
REPLACEMENT LANGUAGE

For each isssue on which Ameritech's Brief on Exceptions takes exception, this Appendix sets forth proposed replacement language. In every instance, replacement language is proposed for the "Analysis and Conclusion" portion of the HEPAD. [1]

The formatting of the replacement language is as follows: Each issue starts on a new page. Suggested new language appears as red, underscored text. Suggested deletions appear as red strike-throughs of the existing HEPAD text.

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[1] In one instance (Issue 1A), replacement language is also proposed for the statement of "Ameritech Illinois' Position" in the HEPAD in order to establish a predicate for the suggested modification to the "Analysis and Conclusion." The suggested modification to the statement of "Ameritech Illinois' Position" is faithful to Ameritech Illinois' position as it was presented in the arbitration. In other words, we have not changed the actual Ameritech Illinois position, but only the HEPAD's summary of it.

1. **Reciprocal Compensation**

(a) Definition of "Local Calls

Ameritech's Position

Al's proposal excludes ISP-bound traffic from the definition of ~~local~~ calls that are subject to reciprocal compensation. In order to be subject to reciprocal compensation, a ~~Local~~ calls must be telephone exchange service, i.e., must originate and terminate within a single local exchange. ~~actually originate and terminate with parties physically located within the same local calling area. Reciprocal compensation is only applicable for the voice portion of local calls. Internet calls~~ ISP-bound traffic therefore is ~~are~~ not subject to reciprocal compensation under ~~this agreement or~~ the Act because the FCC ruled in its December 23, 1999, Order *In the matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability* that ISP-bound traffic does not originate and terminate within a single exchange and therefore does not constitute telephone exchange service.

Ameritech further contends that even if ISP-bound traffic is subject to reciprocal compensation, section 252(d)(2)(A) of the 1996 Act requires Level 3's reciprocal compensation rate only to compensate Level 3 for the costs it incurs for terminating such traffic to its ISP customers. According to the testimony of Al witnesses Harris and Panfil, the costs that Level 3 incurs when it delivers Internet traffic to its ISP customers are significantly lower than the costs that Al incurs when it delivers traffic to its customers, and Level 3's reciprocal compensation rate for ISP-bound traffic must be commensurately lower than Al's Commission-approved reciprocal compensation rates. Specifically, Ameritech points to (1) the fact that ISP calls on average last approximately seven times as long as non-ISP calls, which means that the one-time "set-up" cost component in Al's reciprocal compensation rates would be recovered seven times over by Level 3 if Level 3 were permitted to charge the same reciprocal compensation rates as Al; (2) the fact that Level 3 uses efficient (i.e., lower-cost) soft-switching technology for its ISP traffic, and has otherwise configured its network so as to minimize its costs for transporting and delivering ISP traffic; and (3) the fact that Level 3 ISP customers collocate their equipment at Level 3's premises, which reduces the costs of delivering traffic to those customers.

Based on these considerations, and the fact that Level 3 has not come forth with any evidence of the costs it actually incurs to deliver Internet traffic to its ISP customers, Ameritech proposes that if Level 3 is permitted to charge Al reciprocal compensation for ISP-bound traffic, the rate should be $.001333 per minute, which is Al's current end office termination rate, adjusted for some of the cost savings identified above.

Analysis and Conclusion:

Most recently this issue was visited at this Commission in docket 00-0027, In the Matter of Focal. The Commission determined after considering the same basic issues that ISP is local for the purposes of reciprocal compensation. In entering this order the Commission is aware that this issue to be considered later as part of a generic docket. Further, that there is a possible changing attitude regarding the Internet and its rapid growth. However, there is not anything on this record that would change the Commission's opinion that ISP-bound traffic is subject to reciprocal compensation at this time.

The Commission's decision in docket 00-0027 did not, however, address the arguments that Ameritech presents here concerning the appropriate reciprocal compensation rate for Level 3 to charge for transporting and delivering ISP traffic. As a legal matter, there is no denying that section 252(d)(2)(A) of the 1996 Act does provide that the reciprocal compensation that Al pays Level 3 should compensate Level 3 for its costs of transporting and terminating traffic and, thus, a reciprocal compensation rate that over-compensates Level 3 for those costs cannot be squared with the Act. Based on the record in this matter, we cannot determine with any precision what Level 3's actual costs are for delivering ISP traffic. It is clear, however, that those costs are significantly lower than the costs on which Ameritech Illinois' reciprocal compensation rates are based, for the reasons discussed by Al witnesses Harris and Panfil and summarized above. Accordingly, the parties' agreement shall provide that Al will pay Level 3 reciprocal compensation for ISP traffic at the rate of $.001333 per minute proposed by Ameritech. The parties' agreement shall also provide, however, that this arrangement will be modified in accordance with the Commission's resolution of the ISP issue in the generic docket that the Commission will be opening, and will further provide that if the result of that modification is a rate different than $.001333, then payments made between the Effective Date of the agreement and the date of the modification will be trued up, so that the new rate will be applied retroactively to the Effective Date of the agreement.

(b) Eligibility for Tandem Compensation

Analysis and Conclusion:

This issue has not come to fruition as yet, because Level 3 does not yet seek authorization to charge the tandem rate. The parties have, however, asked the Commission to decide what language should appear in section 1.1.29.2 of the General Terms and Conditions of the agreement to define the circumstances under which Level 3 will be entitled to charge the tandem rate in the future. This is easily resolved. The parties' agreement should simply state that a Level 3 switch will be classified as a Tandem Switch when and to the extent that it meets the requirements of 47 C.F.R. section 51.711(a)(3) applied consistently with paragraph 1090 of the FCC's First Report and Order (FCC 96-325) in CC Docket No. 96-98. It is in that regulation and that paragraph of the First Report and Order that the FCC has set forth the test for eligibility to charge the tandem rate, and the Commission will apply that regulation and that paragraph to the facts presented when and if Level 3 claims the right to charge the tandem rate in the future. ~~The decision of functionality rests as stated in the Focal decision whether this Commission is desirous of setting disparate reciprocal compensation rates for the transport and termination of traffic depending upon whether the traffic is terminated in an end office switch or a tandem switch. This is a matter that is best left for the generic docket to decide that issue. Only because we are not at that point where Level 3 is prepared to seek charges can this matter be deferred to the Commission.~~

2. **Deployment of NXX Codes**

Analysis and Conclusion

We note that AI's proposal in this case is different from that presented in the Focal arbitration. Our finding in Focal was based on the question as to whether Focal should be required to establish a POI with 15 miles of the rate center for any NXX code that it uses to provide FX service and our consideration of the Focal's evidence as to the number of POI's being established. Here, AI is asserting that the lack of POI's requires it to carry a call long distances with no compensation for the haul.

~~Both the record and the time constraints that drive these proceedings mitigate against any meaningful review and analysis of the intercarrier compensation portion of the dispute. While we see some merit to AI's position, the language it proposes is not detailed or developed enough or supported by the type of evidence necessary to gain our confidence. To the extent that AI did not get all the evidence in discovery that it required to make its showing, it could have and should have brought the matter to our attention. Moreover, while the premise AI offers may be meritorious to some degree, the particular methodology advanced does not show itself as the most reasonable for the task. Hence, we agree with Level 3 to the extent that AI's proposal is ill-defined and cannot be included in this agreement.~~

We agree with Ameritech Illinois that it should not be required to provide free interexchange transport or free switching for Level 3's FX service. As Ameritech explains, when it provides an FX service, its FX customer pays AI for the transport and switching costs incurred in carrying the call from the caller's rate center to the FX customer's physical location. When Level 3 provides the same FX service to its customer and Ameritech provides the same interexchange transport and switching to carry the call from the caller's rate center to Level 3's point of interconnection, AI should be compensated for that use of its network – either by the Level 3 customer or by Level 3 (depending on which of the two arrangements offered in AI's proposed FX sections 3.1 and 3.2 the parties choose to employ). Otherwise, Level 3 would enjoy a free ride on AI's network, and would thereby obtain an inequitable cost advantage over Ameritech in offering competing FX service.

We further agree that to allow Level 3 this "free ride" would distort Level 3's incentives to invest in facilities and also would undermine the competitive process that Congress sought to promote in the 1996 Act.

We are not alone in this conclusion. As Ameritech points out, the state utility commissions in Maine and California have recently agreed with the position that Ameritech advances here.

Accordingly, the parties' agreement shall provide for an inter-carrier compensation arrangement that allows each carrier to be fairly compensated for the contribution it makes to providing FX service. Ameritech Illinois offers an Appendix FX

that, according to Ameritech, accomplishes that purpose. Generally, we agree that Appendix FX appropriately accomplishes the intended purpose and, in particular, that sections 3.1 and 3.2 of Appendix FX offer reasonable alternative approaches to the task. Level 3, however, objects that sections 3.1 and 3.2 are too vague, in that they require the payment of compensation in unspecified amounts for the use of unidentified facilities and services used in the provision of FX service. Although the record in this case makes clear that the facilities and services for which compensation is to be paid are transport and switching, we believe that Level 3 is correct in its suggestion that sections 3.1 and 3.2 should be made more specific, if only to reduce the likelihood of disputes in the future. Accordingly, when the parties prepare an interconnection agreement reflecting the determinations in the Commission's Arbitration Decision, Ameritech Illinois shall work with Level 3 to develop more detailed language for FX sections 3.1 and 3.2 to meet Level 3's concerns in this regard. If the parties are unable to agree on such language, we will address the matter when the parties submit the agreement for approval or rejection.

The reciprocal compensation portion of the issue is straightforward. ~~a different matter. As we are told,~~ ~~t~~The FCC's regulations require reciprocal compensation only for the transport and termination of "local telecommunications traffic," which is defined as traffic "that originates and terminates within a local service area established by the state commission." 47 C.F.R. 51.701 (a)-(b)(1). ~~According to Al,~~ FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation. Whether designated as "virtual NXX," which Level 3 uses, or as "FX," which Al prefers, this service works a fiction. It allows a caller to ~~believe and~~ be billed for a local call when, in reality, such call is travelling ~~to~~ a distance that, absent this device, ~~it~~ would make the call ~~constitute~~ a toll call. The virtual NXX or FX call is local only from the caller's perspective and not from any other standpoint. There is no reasonable basis to suggest that calls under this fiction can or should be considered local for reciprocal compensation. Moreover, we are not alone in this view. The Public Utility Commission of Texas recently determined that, to the extent that FX-type calls do not terminate within a mandatory local calling scope, they are not eligible for reciprocal compensation. See, Docket No. 21982, July 13, 2000. All in all, the agreement should make clear that if an NXX or FX call would not be local but for this designation, no reciprocal compensation attaches.

Finally, with respect to the Appendix FGA, the only proposal on the table is that of Al, and Level 3 has not apprised us fully as to the specifics of its objections. Hence, on the understanding that the FCC requires such action, the Al language should be adopted.

7. **Deposits, Billing and Payments**

Analysis and Conclusion:

It is common business practice for a party to protect its interest by requesting some type of security in the form of a deposit. The criteria for determining who is required to post a deposit is not just the ability to pay but whether a party pays promptly. Other jurisdictions have determined that a deposit by a CLEC is appropriate where either there is no, inadequate or poor credit history. Ameritech suggests that a determination of whether deposit is required should be examined in relation to late payment notices. Ameritech asserts that a four-month deposit based upon projected billings is necessary to protect its interests. Level 3 asserts because of its good financial standing that it should not be required to post any deposit and that the agreement is too vague because it fails to define good credit history, further late notice may be sent out in error.

Ameritech wants written notice of billing disputes and what the basis for the dispute so that it may be resolved within a reasonable time. Level 3 claims that when a dispute arises it often takes more than the date the bill is due to determine what the actual disputed amount is.

It is a common practice in business to require a deposit for new clientele. However, that is usually based upon something other than merely lack of time of doing business, especially in the Utility Industry. When a deposit is required of a new customer it is generally because he has shown him/herself to be unreliable in the past or a poor credit risk based upon accepted business practices. Ameritech has failed to show that CLEC's pose any greater risk than does any other business customer at large. The amounts claimed as losses are meaningless unless they relate to overall charges or similar risks with other customers. The are merely dollar amounts and while they may constitute significant numbers do they represent 1% or 25% or 50% of billings of CLEC's. What percentage of business losses did Ameritech suffer during that period? It is hard ascertain from the testimony whether is an acute problem or just regular business occurrence. There is nothing in the record to indicate that CLEC's should be treated differently from any other business customer. Level 3 correctly points out in its argument (Level 3 brief at 52) that the terms of this agreement are different that Ameritech treats its own business customers.

The marriage of CLEC's and ILEC's is a governmental arrangement. It was contemplated that it was also a business arrangement. Care must be taken to insure that CLEC's are afforded an opportunity to enter and compete in the market. To the extent ILEC's may be placed at a disadvantage was contemplated by the Act. The method by which Ameritech determines the necessity for a deposit of its business is an adequate determiner for this agreement, as established retail local services tariff with a slight modification. It must also be recognized that CLEC charges will generally pose a larger exposure on the part of Ameritech than a regular business customer will. To add a measure of protection we tie the number of months of deposit to the number of

months the CLEC is late in paying. If the CLEC is late in paying three times in 12-month period a deposit of two month's estimated billing, four late payments justify three months and five late payments or more four months deposit. This will protect Ameritech against CLEC's as it would against any of its other business customers. This Commission is not persuaded or dissuaded by the amount finances a CLEC has on hand. It is its willingness to part with it in a timely fashion, which establishes its credit history. Further, this will not act, as a bar to other CLEC's since the amount of potential deposit will be in relation to their size.

Level 3 claims that it will not have enough time to properly examine its bills and resolve disputes within the time set for payment of bills. That 30 days is adequate for payment of undisputed bills but a longer period is required for determining disputed amounts. Ameritech asserts that Level 3 will be able to delay payment for up to 90 days by claiming that it has a disputed a bill.

Although Level 3 claims to be unable to determine the extent of a dispute within 30 days it should be able determine that a dispute does exist within that time frame. It is not unduly burdensome on Level 3 to give notice within the 30-day period that it is disputing the bill. Further, within another 30 days after the bill is due Level 3 shall pay all undisputed amounts to Ameritech and further full identify what the nature of the dispute is and the amount disputed. ~~An escrow deposit of the disputed amount shall not be required unless the number of disputes exceeds two per 12-month period.~~ Further, to protect Ameritech from frivolous disputes, if Level 3 fails to substantiate 75% of the disputed amount of any disputed billing period it shall constitute a late payment.

14 **Assignment**

Analysis and Conclusion

Issue 14 encompasses several sub-issues. First, Level 3 and Ameritech both want the parties to seek prior approval of the transfer or assignment of this agreement to another party. Ameritech objects stating that this is not symmetrical situation, it should not be required to get the approval of CLEC's to transfer or assign agreements.

The purpose of seeking this type of approval is to insure the parties that in the event of transfer or assignment that they will not receive any less than they bargained for. We agree with the position of Ameritech. As the ILEC they bear most of the burdens in these transactions. It is almost certain should they transfer or assign any rights it will be to an equal or superior status. The same can not be true of all CLEC's. As the incumbent Ameritech is here to stay and the transfer or assignment to another company would involve close scrutiny by many regulating bodies before it became effect. However, a CLEC transfer could occur in short time and compel the ILEC to do business on terms, which it normally would otherwise do. For that reason we believe that it necessary for Level 3 to seek prior approval from Ameritech prior to transfer or assigning its rights under the agreement. We do not hold that the same is necessary for Ameritech.

As to the parties' disagreement over whether the notice of assignment should be given 90 days or 30 days before the proposed assignment, we conclude that 90 days' notice is more reasonable. The longer period will better ensure that Ameritech has sufficient time to update its records to account for the assignment of the interconnection agreement to another entity, and thereby to avoid billing problems and other difficulties that might otherwise occur.

Next, Level 3 opposes AI's proposed language that would preclude Level 3 from assigning the interconnection agreement to an affiliate that already has an interconnection agreement with Ameritech Illinois. Level 3's post-hearing brief, however, did not explain the basis for Level 3's objection. Ameritech, on the other explained that its proposal is necessary to prevent confusion and simplify the administration of interconnection agreements. A Level 3 affiliate could always opt into the Level 3 agreement as its own, with no assignment being necessary, in which event the Level 3/Ameritech Illinois agreement would still remain in place. If, however, Level 3 wanted to transfer or assign the existing agreement to an affiliate, the Level 3/Ameritech Illinois agreement would end, while the Affiiliate/Ameritech Illinois relationship would arguably have become subject to two different contracts. AI's proposal is reasonable.

Finally, Level 3 seeks to delete language that would require the parties to agree on name change charges before the agreement can be transferred or assigned. Level 3's objection, which again is not explained in its post-hearing brief, is not sustained. As AI explained, the language in question is ncessary because unless the name change is

completed on time, there could be serious billing and other problems in transitioning to the new CLEC.

19. Enhanced Extended Loops (E.E.L.'s)

Analysis and Conclusion

We address first the question whether ISP-bound traffic can be treated as "local exchange service" for purposes of Level 3's EEL certifications. The FCC, in a *Supplemental Order Clarification* dated June 2, 2000, addressed the criteria that a CLEC must meet in order to obtain special access conversions. In that Order, the FCC repeatedly referred to the percentage of "local *voice* traffic" and "local *dialtone* service" that the CLEC must provide in order to meet the test. ISP traffic, of course, is not voice traffic, and it is not dialtone service. Thus, it appears that the FCC did not consider ISP traffic to be "local exchange service" for the purpose of EEL certifications.

The same conclusion can be drawn from the FCC's statement in the same Order (footnote 76) that, "[w]ith regard to data services, we note that the local usage options we adopt do not preclude a requesting carrier from providing data over circuits that it seeks to convert, as long as it meets the thresholds ocntained in the options." By drawing this distinction, the FCC was apparently recognizing that "data service" – such as service to ISPs – is not "contained in the options" that define a significant amount of "local exchange service."

Thus, it appears clear that the FCC, which promulgated the EEL certification criteria we are now called on to interpret, itself interprets "local exchange service" for purposes of those criteria as not including ISP traffic. We will not substitute our views for the FCC's understanding of its own criteria, and so conclude that ISP traffic may not be counted as local exchange service for purposes of EEL certifications.

Level 3 has suggested that since ISP-bound traffic is local for purposes of reciprocal compensation, it must be local exchange service for purposes of EEL certifications. While that suggestion has some surface appeal, it is not necessarily correct. The FCC, of course, has not ruled that ISP-bound traffic is local for purposes of reciprocal compensation; rather, that is a conclusion that this Commission (and other state commissions and courts) have reached. Again, though, when we are dealing with criteria that the FCC itself promulgated, we attach the greatest weight to the FCC's own interpretation of those criteria, as reflected in the *Supplementatl Order Clarification.*

Turning to a different aspect of Issue 19, Ameritech has a standard certification form that is uses when seeking a special access conversion. Since most or all CLECs who seek a special access conversion from Ameritech will be using this form, there is something to be said for the uniformity that would be achieved by requiring Level 3 to use the same form. At the same time, however, we would not require Level 3 to use Ameritech's form if it imposed burdens on Level 3 greater than those that the FCC has required.

As Ameritech Illinois demonstrated in its post-hearing brief, the information that its form calls for is no more than the CLEC seeking the conversion would have to gather in order to make a truthful certification. Thus, the use of Ameritech's form would not impose a burden on Level 3 (beyond the negligible burden of putting on paper information that it has already gathered).

Level 3 avers that all the FCC requires is a letter setting forth a request and the local usage option the requesting carrier seeks to qualify. Staff has filed and opinion on this issue and in essence agrees with Level 3.

We are not inclined to exalt form over substance, however, by saying that because a letter may be sufficient, a form should not be used. We also note that the use of Ameritech's form may reduce future disputes by answering questions that might be raised by a perfunctory letter, which might well provoke an audit request by Ameritech.

Accordingly, the parties' agreement may require Level 3 to use Ameritech's standard EEL certification form.

~~Under the FCC rules a letter is all that is required and is sufficient for the purposes of this agreement. Ameritech's certification goes beyond the requirements of the FCC and would tend to hinder not promote CLEC growth. Would Ameritech be able to deny an EEL if a party failed to fill out part of the form but in all other respects complied with the FCC requirements? The additional requirements are surplus and should be voluntary if a party seeks to do so.~~

~~In accordance with the decision of issue 1 and the previous decisions by this commission for the purposes of EEL's ISP traffic should be regarded as local. However, the CLEC must clearly state in the letter which of the three grounds that it is seeking certification.~~

Finally, with respect to the last aspect of the EEL certification issue we have been asked to address, ~~T~~the FCC and various State Commission have consistently held that the CLEC should remain responsible for termination fees. There is no reason at this point to take a fresh-look at termination charges. We agree with Ameritech that if the FCC felt a fresh look was mandated or appropriate would have so state in its UNE remand.

We also agree that Ameritech is entitled to recurring charges for special access conversions. As Ameritech points out these reimbursement are to compensate for the actual costs involved in the conversion. However, those charges should reflect the actual costs incurred by Ameritech on a TELRIC Basis

27. **Point of Interconnection**

Analysis and Conclusion

Level currently has one POI in the Chicago LATA. The POI is located in downtown Chicago at the Wabash Tandem. From there Level 3 traffic is routed to the Level 3 switch about 8 blocks away. Ameritech has 8 tandems located throughout the Chicago Area. NXX calls are transported by Ameritech to the POI downtown and then by Level 3 to its switch. Ameritech wants Level 3 to establish POI's at the tandems around the area. Once transferred to a POI then Level 3 would bear the cost of the transport. The closer to the initial call is the POI the less Ameritech has to pay for transport. The parties have each suggested a level of traffic that a POI should be installed.

Ameritech suggests a DS-3 level or ~~approximately~~ 672 calls being transmitted simultaneously. In the alternative, Ameritech suggests an OC-3 level, or 2016 calls being transmitted simultaneously. Level 3 suggests an OC-12 level or 8064 ~~about 12,000~~ calls occurring simultaneously over the network. Staff agrees that OC-12 is an acceptable level. A DS-3 represents about ~~.5~~ 1.3% at a tandem; an OC-3 represents about 4.3%~~,~~; while an OC-12 is about ~~5.7~~ 17%. Level 3 admits that 95% of its traffic is ISP. The rapid continuous growth of the internet suggests that it is only a matter of time before Level 3 will have to install additional POI's in the Chicago LATA.

The installation of POI's effects other issues in this and future arbitrations. With a POI installed in a tandem the issue of the cost of regular and virtual NXX numbers transport all but disappears. The question then is what is the appropriate level of traffic?

The average tandem in the Chicago area services about 2-3 hundred thousand terminus sites. At 672 peak calls POI installation would be accelerated but would place an unfair burden on CLEC's. Once again the purpose of the 1996 Telecommunications Act was to encourage and foster CLEC competition through various protective schemes. To set the figure too high would place an extra burden on the ILEC's and not encourage fiber and technical growth in the Chicago LATA.

We feel that the threshold should be on an optical carrier level. The FCC only requires a CLEC to have a single POI per LATA where technically feasible and multiple switching access charges has no bearing on technical feasibility. ~~Both Level 3 and Staff have stated that OC-12 is an applicable standard.~~ Level 3 should be afforded ample ~~every~~ opportunity to establish itself in the Chicago LATA and progress at a speed that is commensurate with sound economic growth. By allowing sufficient time and traffic to build up before requiring a POI be established would accomplish this end and further assure that Level 3 would be able to supply up to date technology. We believe ~~agree~~ that OC-3 ~~12~~ represents the appropriate level of traffic before requiring a POI be established.

34. **Indemnity**

Analysis and Conclusion

~~While~~ tThe concerns of Ameritech regarding the potential dangers to its OSS are ~~may be~~ valid, and it is ~~un~~reasonable to require Level 3 to indemnify Ameritech for acts of Level 3's employees or of persons who abuse Ameritech's OSS by availing themselves of information or facilities obtained from Level 3.~~others.~~ The fact that a customer of Level 3 causes harm to the OSS of Ameritech is not the responsibility of Level 3, however. Accordingly, Ameritech's proposed language will be included in the parties' agreement, with the understanding that it is not intended to extend to abuse of Ameritech's OSS by Level 3's customers. ~~It is the equivalent of asking Level 3 to vouch for the good conduct and behavior of all its subscribers. It amounts to a near impossibility. Even employers are not required to vouch for the certain conduct of their employee unless they knew or should have know of the propensity, how can you then ask Level 3 to vouch for strangers.~~